

SANTANNA NATURAL GAS CORPORATION)
d/b/a SANTANNA ENERGY SERVICES)
) Docket No. 02-0441
Application for Certificate of Service Authority)
Under §19-110.)

The Citizens Utility Board ("CUB") files this Response to Santanna Natural Gas Corporation's d/b/a Santanna Energy Services ("Santanna") Motion For Leave To File a Late-Filed Exhibit and in support thereof states as follows:

1. On September 27, 2002, Santanna filed a motion for leave to file a late-filed exhibit. *See generally*, Santanna Motion.
2. In its motion Santanna contends that CUB's Initial Brief improperly referenced evidence contained in AG Stipulated Exhibit 1—a CD-ROM containing records maintained, generated and produced by Santanna in response to the Attorney General's successful Motion To Compel. Santanna Motion, ¶ 8.
3. In our Initial Brief, CUB stated "[a]s late as July 2002, Santanna refused to cancel customers by phone, and instead required customers to send a written letter of cancellation before actually terminating service. Thus customers were forced to take service for longer than was necessary." CUB Initial Brief, p. 3. In support of this statement, CUB cites, *inter alia*, AG Stipulated Exhibit 1. *Id.* CUB also explicitly referenced the files within the CD-ROM, some of which contain scanned copies of customer cancellation letters, particularly the penultimate file on the CD-ROM directory,

which contains Santanna's internal notations on customer accounts. *Id. See also*, Tr. 23, 531-532.

4. Santanna erroneously concludes that the Administrative Law Judge precluded CUB's reference to these materials. Santanna Motion, ¶ 6. The record reflects that the Judge did *not* expressly limit the use of the CD-ROM. In fact he stated: "To the extent that the CD-ROM information is contained within the record, I don't see any problem with the parties in their briefs commenting on what that evidence is. If that means tallying it up for their own arguments, that's fine." Tr. 528.

5. The company also argues that at hearing, it objected to the CD-ROM being used for any purpose *other than* as "a tally of the types of complaints and allegations contained therein." Santanna Motion, ¶ 5. However, Santanna's objection was clearly overridden by the Judge's ruling.

6. The Judge further stated, in response to CUB's inquiry regarding the use of information in the form of an appendix, "That seems like a back door means to get an exhibit in, so I was thinking more of *an in brief commentary*." Tr. 529. (Emphasis added). CUB's brief contained exactly that—"in brief commentary" regarding the evidence contained on the CD-ROM. CUB Brief, p. 3.

7. CUB's in brief comments were not new arguments as Santanna alleges. Santanna Motion, ¶ 6. Indeed, CUB's comments were previously adduced arguments regarding customers' inability to cancel service with Santanna. *See generally*, Staff Ex. 1.0 (Howard Direct); AG Ex. 1.00 (Hurley Direct), App. 1.01. In support of its statements, CUB cited not only AG Stipulated Exhibit 1, but also CUB generally cited the customer complaints already a part of this record. CUB Initial Brief, p. 3. The

complaints on record reference the customer being told to write a letter in order to cancel service. *See*, for example, Appendix 3 of CUB's Motion To Stay, p. 97. *See also*, AG Ex. 1.0, App. 1.01, at pp. AG 82-83. Accordingly, CUB's references were not new arguments, but issues that were already contained within the record. CUB referenced the CD-ROM as corroboration of information/allegations already put forth in this proceeding. CUB Brief, p. 3.

8. Santanna now seeks to introduce into evidence the affidavit of T. Wayne Gatlin. Santanna Motion, ¶ 9. This document is offered under the guise of clarifying CUB's comments regarding the CD-ROM, however the disc is the best evidence of the contents therein.

9. Mr. Gatlin's affidavit improperly offers additional direct testimony after the close of the evidentiary record and consequently precludes cross-examination by opposing parties. *See generally*, Affidavit of T. Wayne Gatlin. As Santanna noted at hearing, in its objection to the submission of an additional exhibit based upon the contents of the disc, "we don't have a chance to cross anybody . . . to determine the accuracy of it" Tr. 528. If this affidavit is admitted, CUB and other parties should be entitled to conduct additional cross-examination regarding the numerous additional issues raised therein.

10. The affidavit seeks to introduce new evidence regarding the manner in which Santanna tracks and maintains its computerized customer records, (particularly cancellations) and the rationale underlying Santanna's policy of requiring written cancellation requests. Gatlin Affidavit, ¶¶ 4-7. Additionally, the affidavit discusses allegations made by commercial customers—a customer class that Santanna did not put

at issue in the instant proceeding.¹ *Id.* at ¶ 7. This is precisely the type of “additional testimony” or “additional comment of a testimonial nature” that Judge Albers expressly forbade. Tr. 534.

11. In addition to the foregoing, ¶¶ 8 and 9 of Mr. Gatlin's affidavit are expressly negated by the CD's contents and the customer complaints in the record.

12. Mr. Gatlin states that Santanna's policy of requiring customers to provide written letters of cancellation changed in May 2002, and was then required "only from those customers who had not yet received gas from Santanna." Gatlin Affidavit, ¶ 8. He also states that in June the policy was completely abandoned. Gatlin Affidavit, ¶ 9. However, at page 18 of 2193 (the penultimate file in the initial directory of the disc containing NICOR customer complaints) a customer complains about the high bill contained in her June 10th billing statement. AG Stip. Ex. 1 at 18 of 2193. The “Resolution” category of the customer's account reflects "Received Cancellation Letter on 6/19/02" and "Approved Cancellation and Printed Cancellation Letter on 6/19/2002 at 5:00:27 PM." *Id.* The account notations also indicate that the customer's account was cashed out, i.e. refunded for the amount of gas placed in storage and *charged to the customer.* *Id.* at 19 of 2193.

13. The account notations wholly contradict Mr. Gatlin's assertion that Santanna's written cancellation request policy was discontinued in June—the customer's cancellation letter was entered as received on June 19th. *Id.* Moreover, the notation regarding the customer's invoices demonstrates that she was billed for gas, not once, but twice, thus negating the assertion that only customers who had *not* received gas were

¹ Santanna has repeatedly argued that customer complaints are "inherently suspect" and "untrustworthy," yet it now seeks to submit an affidavit that references these very complaints. Santanna Brief, pp. 30-31

required to send a cancellation letter. *Id.* (See “Resolution” portion of customer account notation).

14. Complaints in the record similarly contradict Mr. Gatlin’s sworn statement. The customer complaint at page 97 of Appendix 3 to CUB’s Motion To Stay, reflects a filing date of June 20, 2002. According to the complaint, the customer attempted to cancel service with Santanna via phone but was instructed to send a letter. *Id.* Moreover, the customer had already been billed for 172 therms (40 therms of actual usage) at the time of his attempted cancellation. *Id.* Thus, the customer had not only received gas, but was also required to send a cancellation letter in June, a direct contravention of Santanna’s purported policy. *See* Gatlin Affidavit, ¶¶ 8-9.

15. Notably, many of the accounts on the disc reflect Santanna’s receipt of a customer cancellation letter in the months of July and August. *See*, for example, AG Stip. Ex. 1 (penultimate file in initial directory) pp. 2-8, 11, 14, 16, 18 of 2193.² These were received well after the period that Santanna stopped requiring letters, according to Mr. Gatlin’s affidavit. Gatlin Affidavit, ¶¶ 8-9.

16. Santanna contends that the "Awaiting Cancellation Letter" notation is a computerized entry that is automatically noted in customer accounts. Gatlin Affidavit, ¶¶ 5-6, 10. This notation is contained in the “Problem” category of the customer account record. AG Stip Ex. 1.

17. The “Resolution” category of the account logs clearly contains Santanna’s customer service representatives’ comments. AG Stip. Ex. 1. *See* for example, 1241 of 2193 (notation refers to customer as an expletive); 1920-1921 of 2193 (refers to customer

"screaming" at representative); 2174 of 2193 ("customer called in screaming and shouting"). The Resolution portion was apparently intended for, and does in fact contain, customer service representatives' commentary regarding the account (and in many cases, regarding the customer). *See generally* AG Stip. Ex. 1. Surely Santanna's automated entries do not include expletives and other casual comments like the ones contained in the Resolution portion of its database. *Id.*

18. The Resolution section entries also contradict Mr. Gatlin's statements. *Id.* This section reflects the cancellation dates, the amount of customer refunds, if any, and also notes of Santanna's customer service representatives' conversations with the customer. *Id.*

19. At hearing, Santanna made no effort to describe the contents of the CD-ROM. Tr. 21, 23, 532-533. Had the company wanted to provide additional testimony regarding its computer system or the files contained within the disc, it had ample opportunity to do so.³ *Id.* The affidavit contains new evidence, theories and policy, which were not addressed in the company's pre-filed testimony, or at hearing. It is impermissible to now attempt to insert this information into evidence after the record has been marked heard and taken. Moreover, the affidavit's assertions are flatly contradicted by the contents of the disc itself and other complaints contained in the record.

20. If Santanna's affidavit is admitted, equity requires that the parties be granted an opportunity to cross-examine the affiant regarding the statements contained therein.

² The files contained on the CD-ROM are too numerous to cite, but even a cursory review of these files fully supports the fact that customer cancellation letters were received well into July and August. *See generally*, AG Stip. Ex. 1.

For the foregoing reasons, CUB respectfully requests that the Commission deny Santanna's motion and reject its proffered late-filed exhibit.

Respectfully submitted,

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³ Although the hearing schedule and document production were performed on an expedited basis, CUB, and the Attorney General, like Santanna, had the same limited opportunity to review the disc. Tr. 19-23.